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IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

11 UNITED STATES OF AMERICA,
12 Plaintiff,
13 v.
14 RUBEN ANGEL CASTRO,
15 Defendant.

CASE NO. 2:20-CR-0004-TLN
STIPULATION REGARDING EXCLUDABLE
TIME PERIODS UNDER SPEEDY TRIAL ACT;
FINDINGS AND ORDER
DATE: October 29, 2020
TIME: 9:30 a.m.
COURT: Hon. Troy L. Nunley

17 By previous order, this matter was set for status on October 29, 2020. By this stipulation and
18 proposed order, the parties respectfully request that the Court continue the status conference until
19 December 17, 2020. To the extent it is needed, this stipulation supplements the basis for exclusion of
20 time under the Court's General Orders addressing public health concerns, and requests that the Court
21 also exclude time between October 29, 2020, and December 17, 2020, under Local Code T4, for the
22 reasons set forth below.

23 On April 17, 2020, this Court issued General Order 617, which suspends all jury trials in the
24 Eastern District of California scheduled to commence before June 15, 2020, and allows district judges to
25 continue all criminal matters to a date after June 1. This and previous General Orders were entered to
26 address public health concerns related to COVID-19.

27 Although the General Orders address the district-wide health concern, the Supreme Court has
28 emphasized that the Speedy Trial Act's end-of-justice provision "counteract[s] substantive

1 openendedness with procedural strictness,” “demand[ing] on-the-record findings” in a particular case.
 2 *Zedner v. United States*, 547 U.S. 489, 509 (2006). “[W]ithout on-the-record findings, there can be no
 3 exclusion under” § 3161(h)(7)(A). *Id.* at 507. Moreover, any such failure cannot be harmless. *Id.* at
 4 509; *see also United States v. Ramirez-Cortez*, 213 F.3d 1149, 1153 (9th Cir. 2000) (explaining that a
 5 judge ordering an ends-of-justice continuance must set forth explicit findings on the record “either orally
 6 or in writing”).

7 Based on the plain text of the Speedy Trial Act—which *Zedner* emphasizes as both mandatory
 8 and inexcusable—General Orders 611, 612, and 617 require specific supplementation. Ends-of-justice
 9 continuances are excludable only if “the judge granted such continuance on the basis of his findings that
 10 the ends of justice served by taking such action outweigh the best interest of the public and the
 11 defendant in a speedy trial.” 18 U.S.C. § 3161(h)(7)(A). Moreover, no such period is excludable unless
 12 “the court sets forth, in the record of the case, either orally or in writing, its reason or finding that the
 13 ends of justice served by the granting of such continuance outweigh the best interests of the public and
 14 the defendant in a speedy trial.” *Id.*

15 The General Orders exclude delay in the “ends of justice.” 18 U.S.C. § 3161(h)(7) (Local Code
 16 T4). Although the Speedy Trial Act does not directly address continuances stemming from pandemics,
 17 natural disasters, or other emergencies, this Court has discretion to order a continuance in such
 18 circumstances. For example, the Ninth Circuit affirmed a two-week ends-of-justice continuance
 19 following Mt. St. Helens’ eruption. *Furlow v. United States*, 644 F.2d 764 (9th Cir. 1981). The court
 20 recognized that the eruption made it impossible for the trial to proceed. *Id.* at 767-68; *see also United*
 21 *States v. Correa*, 182 F. Supp. 326, 329 (S.D.N.Y. 2001) (citing *Furlow* to exclude time following the
 22 September 11, 2001 terrorist attacks and the resultant public emergency). The coronavirus is posing a
 23 similar, albeit more enduring, barrier to the prompt proceedings mandated by the statutory rules.

24 In light of the societal context created by the foregoing, this Court should consider the following
 25 case-specific facts in finding excludable delay appropriate in this particular case under the ends-of-
 26 justice exception, § 3161(h)(7) (Local Code T4).¹ If continued, this Court should designate a new date
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28 ¹ The parties note that General Order 612 acknowledges that a district judge may make
 “additional findings to support the exclusion” at the judge’s discretion. General Order 612, ¶ 5 (E.D.
 Cal. March 18, 2020).

1 for the status conference. *United States v. Lewis*, 611 F.3d 1172, 1176 (9th Cir. 2010) (noting any
2 pretrial continuance must be “specifically limited in time”).

3 **STIPULATION**

4 1. By this stipulation, defendant now moves to continue the status conference until December
5 17, 2020, at 9:30 a.m., and to exclude time between October 29, 2020, and December 17, 2020, under the
6 Court’s General Orders and Local Code T4.

7 2. The parties agree and stipulate, and request that the Court find the following:

8 a) The government has produced the discovery associated with this case which
9 includes, among other things, a considerable number of investigative reports, video surveillance,
10 audio recordings, and laboratory reports. The government produced this discovery via a file
11 sharing cloud platform, to which defense counsel has access.

12 b) Counsel for defendant believes she will need some time to go through the
13 discovery. Counsel will also need additional time to consult with her client, to review the current
14 charges, to conduct investigation and research related to the charges, to review discovery for this
15 matter, to discuss potential resolutions with her client, to prepare pretrial motions, and to otherwise
16 prepare for trial.

17 c) Counsel for defendant believes that failure to grant the above-requested
18 continuance would deny counsel the reasonable time necessary for effective preparation, taking
19 into account the exercise of due diligence.

20 d) The government does not object to the continuance.

21 e) Based on the above-stated findings, the ends of justice served by continuing the
22 case as requested outweigh the interest of the public and the defendant in a trial within the original
23 date prescribed by the Speedy Trial Act.

24 f) For the purpose of computing time under the Speedy Trial Act, 18 U.S.C. § 3161,
25 et seq., within which trial must commence, the time period of October 29, 2020 to December 17,
26 2020, inclusive, is deemed excludable pursuant to the Court’s General Orders, and pursuant to
27 18 U.S.C. § 3161(h)(7)(A), B(iv) [Local Code T4] because it results from a continuance granted
28 by the Court at defendants’ request on the basis of the Court’s finding that the ends of justice

1 served by taking such action outweigh the best interest of the public and the defendant in a speedy
2 trial.

3. Nothing in this stipulation and order shall preclude a finding that other provisions of the
4 Speedy Trial Act dictate that additional time periods are excludable from the period within which a trial
5 must commence.

6 IT IS SO STIPULATED.

7 Dated: October 26, 2020

McGREGOR W. SCOTT
United States Attorney

9 /s/ JAMES R. CONOLLY
10 JAMES R. CONOLLY
11 Assistant United States Attorney

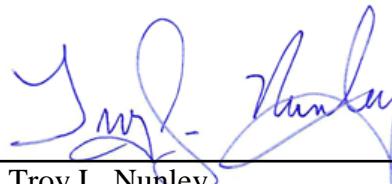
12 Dated: October 26, 2020

13 /s/ LINDA C. ALLISON
14 LINDA C. ALLISON
15 Assistant Federal Defender
16 Counsel for Defendant
17 RUBEN ANGEL CASTRO

FINDINGS AND ORDER

18 IT IS SO FOUND AND ORDERED this 27th day of October, 2020.

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Troy L. Nunley
United States District Judge